



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:040. UST system release [Release] detection.

6 RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart D, Part 281, 42 U.S.C.

7 6991c

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart

9 D, Part 281, 42 U.S.C. 6991c.

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the

11 Environmental and Public Protection Cabinet [~~Natural Resources and Environmental Protection~~

12 ~~Cabinet~~] to develop and conduct programs that provide for the prevention, abatement, and

13 control of contaminants that may threaten the environment. KRS 224.60-105 [(2)] requires the

14 cabinet to regulate underground storage tank (UST) systems by requiring registration

15 [~~notification~~], minimum construction and performance standards, leak detection, recordkeeping,

16 release reporting, corrective action, closure, financial responsibility, and other standards to

17 protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a

18 regulatory program that implements federal requirements for UST systems. This chapter

19 identifies requirements for UST systems. This administrative regulation establishes the

20 requirements for UST system release detection and recordkeeping. [~~recordkeeping for all UST~~

21 ~~systems.~~]

1           Section 1. Adoption of Federal Regulations. (1) The requirements for UST system release  
2     detection and recordkeeping for UST systems are governed by 40 CFR Part 280 Subpart D  
3     ~~[(1994)]~~.

4           (2) The documents incorporated by reference in Section 3 ~~[Section 2]~~ of this  
5     administrative regulation shall be used in meeting the requirements of subsection (1) of this  
6     section.

7           (3) The results of the following tests required by 40 CFR Part 280 Subpart D shall be  
8     submitted to the cabinet within thirty (30) days of the test completion:

9           (a) Annual Line Tightness Test for Pressurized Piping;

10          (b) Annual Operational Line Leak Detector Test;

11          (c) Five-year Tank Tightness Test; and

12          (d) Tri-annual Line Tightness Test for American Suction Piping.

13          Section 2. Extensions. The owner or operator of a UST system may request extension of  
14     a time frame for any report required by this administrative regulation. The extension request  
15     shall be submitted in writing and received by the Underground Storage Tank Branch of the  
16     Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the  
17     cabinet determines that an extension would not have a detrimental impact on human health or the  
18     environment.

19          Section 3 [2]. Incorporation by Reference. (1) The following documents are hereby  
20     incorporated by reference:

21          (a) "Site [Underground Storage Tank System Site] Assessment Outline for External UST  
22     System Release Detection Methods (Groundwater, Vapor, and Interstitial Monitoring)" (January  
23     2006) ~~[(October 1995)]~~; and

1 (b) "External UST System Release Detection [Kentucky Underground Storage Tank  
2 System (External Release Detection) Monitoring] Well Form", DEP 8051 (January 2006).

3 (2) The documents referenced in ~~[subsection (1) of]~~ this section are available for  
4 inspection and copying, subject to copyright law, at the Underground Storage Tank Branch ~~[of~~  
5 ~~the Division of Waste Management]~~, 81 C. Michael Davenport Blvd., Frankfort, KY 40601,  
6 (502) 564-5981, [14 Reilly Road Frankfort, KY 40601, (502) 564-6716] from 8 a.m. to 4:30  
7 p.m., eastern time, Monday through Friday, excluding state holidays ~~[holidays.]~~ and may also be  
8 obtained on the Division of Waste Management's web page located at www.waste.ky.gov.

9 ~~[Section 3. Extensions. The owner or operator of a UST system may request extension of~~  
10 ~~a time frame for any report required by this administrative regulation. The extension request~~  
11 ~~shall be submitted in writing and received by the Underground Storage Tank Branch of the~~  
12 ~~Division of Waste Management prior to the deadline. The cabinet may grant extensions, if~~  
13 ~~warranted.]~~

401 KAR 42:040 is approved for filing.

7-12-2006

Date

John W. Clay  
John W. Clay, Deputy Secretary  
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Bruce Scott, P. E., Director  
Division of Waste Management  
14 Reilly Road  
Frankfort, KY 40601  
Telephone: (502) 564-6716 Fax (502) 564-4049  
Email: Bruce.Scott@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:040

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation adopts federal regulations to establish requirements for release detection and recordkeeping for all underground storage tank (UST) systems.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to adopt the federal regulations for release detection and recordkeeping for all UST systems.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes UST release detection and reporting requirements for 401 KAR Chapter 42 as required by statute.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes release detection and reporting requirements described in KRS 224.60-100 and KRS 224.60-105.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment updates the incorporated materials.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the incorporated materials.
- (c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing the release detection and reporting requirements for the UST program.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment serves to update the incorporated materials for UST release detection and recordkeeping.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

This amendment only updates the incorporated materials for UST release detection and recordkeeping.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no costs associated with implementation of this administrative regulation.
- (b) On a continuing basis: There will be no additional costs associated with implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-150.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment:  
There is no need for increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:  
This administrative regulation had previously established an administrative fee of \$30.00 per tank to be paid annually by UST owners or operators.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)  
No tiering is applied. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

## FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:040

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes   X   No        If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate underground storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impacts from administrative regulation.



**DETAILED SUMMARY OF MATERIAL  
INCORPORATED BY REFERENCE IN  
401 KAR 42:040**

I. This administrative regulation incorporates by reference the "Site Assessment Outline for External UST System Release Detection Methods (Groundwater, Vapor and Interstitial Monitoring", (January 2006). This document is used to establish the requirements for external release detection methods.

This document consists of 10 pages.

II. This administrative regulation incorporates by reference the "External UST System Release Detection Well Form", DEP 8051 (January 2006). This document is used to notify the cabinet when a well is installed for release detection purposes.

This document consists of 1 page.